

MT LEGISLATIVE HISTORY

Chapter 263 1991

Bill H 863 S _____

Original bill & hist. ☒ C

H. Committee on Bus Econ Dev.

S. Committee on Bus Industry

Hearing Date(s) _____ C

Hearing Date(s) _____ C

2/17 ☒ C

3/11 ☒ C

_____ C

_____ C

_____ C

_____ C

Date Out 2/20 ☒ C

3/12 ☒ C

Did this bill originate in an interim committee? ____ Yes ☒ No

Committee _____

Report _____

HOUSE BILL NO. 863

INTRODUCED BY D. BROWN, MAZUREK, LYNCH, THAYER, QUILICI,
NOBLE, KENNEDY, PAVLOVICH, DAILY, FRITZ, WHALEN, DOHERTY,
S. RICE, PHILLIPS, LARSON, MEASURE

IN THE HOUSE

FEBRUARY 14, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
FEBRUARY 15, 1991	FIRST READING.
FEBRUARY 20, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 21, 1991	PRINTING REPORT.
FEBRUARY 25, 1991	SECOND READING, DO PASS AS AMENDED. ENGROSSING REPORT.
FEBRUARY 26, 1991	THIRD READING, PASSED. AYES, 96; NOES, 3. TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 26, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY. FIRST READING.
MARCH 12, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 14, 1991	SECOND READING, CONCURRED IN.
MARCH 15, 1991	THIRD READING, CONCURRED IN. AYES, 48; NOES, 0. RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 19, 1991	RECEIVED FROM SENATE. SECOND READING, AMENDMENTS CONCURRED IN.
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MARCH 20, 1991

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *863*
 2 INTRODUCED BY *Don Brown*
 3 *Frank Noble* *Kennedy* *Carmin* *Paul*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 MONTANA CAPITAL COMPANY ACT BY PROVIDING FOR THE DESIGNATION
 6 OF A MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANY TO BE
 7 ALLOCATED A PORTION OF THE UNUSED TAX CREDITS; LIMITING THE
 8 ALLOCATIONS OF TAX CREDITS TO CAPITAL COMPANIES; AMENDING
 9 SECTIONS 30-10-105, 90-8-102, 90-8-104, 90-8-201, 90-8-202,
 10 90-8-203, 90-8-204, 90-8-205, 90-8-301, 90-8-302, 90-8-303,
 11 90-8-304, 90-8-305, 90-8-311, 90-8-312, 90-8-313, AND
 12 90-8-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
 13 A RETROACTIVE APPLICABILITY DATE."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 **Section 1.** Section 30-10-105, MCA, is amended to read:

17 "30-10-105. Exempt transactions. Except as in this
 18 section expressly provided, 30-10-201 through 30-10-207
 19 ~~shall~~ do not apply to ~~any of~~ the following transactions:

20 (1) any a nonissuer isolated transaction, whether
 21 effected through a broker-dealer or not. A transaction is
 22 presumed to be isolated if it is one of not more than three
 23 transactions during the prior 12-month period.

24 (2) (a) any a nonissuer distribution of an outstanding
 25 security by a broker-dealer registered pursuant to 30-10-201

1 if:

2 (i) quotations for the securities to be offered or sold
 3 (or the securities issuable upon exercise of any warrant or
 4 right to purchase or subscribe to such securities) are
 5 reported by the automated quotations system operated by the
 6 national association of securities dealers, inc., (NASDAQ)
 7 or by any other quotation system approved by the
 8 commissioner by rule; or

9 (ii) the security has a fixed maturity or a fixed
 10 interest or dividend provision and there has been no default
 11 during the current fiscal year or within the 3 preceding
 12 fiscal years, or during the existence of the issuer and any
 13 predecessors if less than 3 years, in the payment of
 14 principal, interest, or dividends on the security.

15 (b) The commissioner may by order deny or revoke the
 16 exemption specified in subsection (2)(a) with respect to a
 17 specific security. Upon the entry of such an order, the
 18 commissioner shall promptly notify all registered
 19 broker-dealers that it has been entered and of the reasons
 20 therefor for the order and that within 15 days of the
 21 receipt of a written request the matter will be set down for
 22 hearing. If no hearing is requested and none is ordered by
 23 the commissioner, the order will remain in effect until it
 24 is modified or vacated by the commissioner. If a hearing is
 25 requested or ordered, the commissioner, after notice of and

1 opportunity for hearing to all interested persons, may
 2 modify or vacate the order or extend it until final
 3 determination. No An order under this subsection may not
 4 operate retroactively. No A person may not be considered to
 5 have violated parts 1 through 3 of this chapter by reason of
 6 any offer or sale effected after the entry of an order under
 7 this subsection if he sustains the burden of proof that he
 8 did not know and in the exercise of reasonable care could
 9 not have known of the order.

10 (3) any a nonissuer transaction effected by or through
 11 a registered broker-dealer pursuant to an unsolicited order
 12 or offer to buy, but the commissioner may require that the
 13 customer acknowledge upon a specified form that the sale was
 14 unsolicited and that a signed copy of each form be preserved
 15 by the broker-dealer for a specified period;

16 (4) any a transaction between the issuer or other
 17 person on whose behalf the offering is made and an
 18 underwriter or among underwriters;

19 (5) any a transaction by an executor, administrator,
 20 sheriff, marshal, receiver, trustee in bankruptcy, guardian,
 21 or conservator in the performance of his official duties as
 22 such;

23 (6) any a transaction executed by a bona fide pledgee
 24 without any purpose of evading parts 1 through 3 of this
 25 chapter;

1 (7) any an offer or sale to a bank, savings
 2 institution, trust company, insurance company, investment
 3 company as defined in the Investment Company Act of 1940,
 4 pension or profit-sharing trust, or other financial
 5 institution or institutional buyer, or to a broker-dealer,
 6 whether the purchaser is acting for itself or in some
 7 fiduciary capacity;

8 (8) (a) any a transaction pursuant to an offer made in
 9 this state directed by the offeror to not more than 10
 10 persons (other than those designated in subsection (7))
 11 during any period of 12 consecutive months, if:

12 (i) the seller reasonably believes that all the buyers
 13 are purchasing for investment; and

14 (ii) no a commission or other remuneration is not paid
 15 or given directly or indirectly for soliciting any
 16 prospective buyer; provided, however, that a commission may
 17 be paid to a registered broker-dealer if the securities
 18 involved are registered with the United States securities
 19 and exchange commission under the federal Securities Act of
 20 1933, as amended.

21 (b) For the purpose of the exemption provided for in
 22 subsection (8)(a), an offer to sell is made in this state,
 23 whether or not the offeror or any of the offerees is then
 24 present in this state, if the offer either originates from
 25 this state or is directed by the offeror to this state and

1 received at the place to which it is directed (or at any
2 post office in this state in the case of a mailed offer).

3 (9) any an offer or sale of a preorganization
4 certificate or subscription if:

5 (a) no a commission or other remuneration is not paid
6 or given directly or indirectly for soliciting any
7 prospective subscriber;

8 (b) the number of subscribers does not exceed 10; and

9 (c) no a payment is not made by any subscriber;

10 (10) any a transaction pursuant to an offer to existing
11 security holders of the issuer, including persons who at the
12 time of the transaction are holders of convertible
13 securities, nontransferable warrants, or transferable
14 warrants exercisable within not more than 90 days of their
15 issuance, if:

16 (a) no a commission or other remuneration (other than a
17 standby commission) is not paid or given directly or
18 indirectly for soliciting any security holder in this state;
19 or

20 (b) the issuer first files a notice specifying the
21 terms of the offer and the commissioner does not by order
22 disallow either (a) or (b) of this subsection;

23 (11) any an offer (but not a sale) of a security for
24 which registration statements have been filed under both
25 parts 1 through 3 of this chapter and the Securities Act of

1 1933 if no stop, refusal, denial, suspension, or revocation
2 order is in effect and no a public proceeding or examination
3 looking toward such an order is not pending under either
4 law;

5 (12) any an offer (but not a sale) of a security for
6 which a registration statement has been filed under parts 1
7 through 3 of this chapter and the commissioner in his
8 discretion does not disallow the offer in writing within 10
9 days of such filing;

10 (13) the issuance of any a stock dividend, whether the
11 corporation distributing the dividend is the issuer of the
12 stock or not, if nothing of value is given by stockholders
13 for the distribution other than the surrender of a right to
14 a cash dividend where the stockholder can elect to take a
15 dividend in cash or stock;

16 (14) any a transaction incident to a right of conversion
17 or a statutory or judicially approved reclassification,
18 recapitalization, reorganization, quasi-reorganization,
19 stock split, reverse stock split, merger, consolidation, or
20 sale of assets;

21 (15) any a transaction in compliance with such rules as
22 that the commissioner in his discretion may adopt to serve
23 the purposes of 30-10-102. The commissioner may in his
24 discretion require that 30-10-201 through 30-10-207 apply to
25 any or all transactional exemptions adopted by rule.

1 (16) any a transaction by a certified Montana capital
 2 company or a certified Montana small business investment
 3 capital company as defined in 90-8-104, provided that such
 4 the company first files all disclosure documents, along with
 5 a consent to service of process, with the commissioner. The
 6 commissioner may not charge a fee for the filing.

7 (17) the sale of a commodity investment contract traded
 8 on a commodities exchange recognized by the commissioner at
 9 the time of sale;

10 (18) a transaction within the exclusive jurisdiction of
 11 the commodity futures trading commission as granted under
 12 the Commodity Exchange Act;

13 (19) a transaction that:

14 (a) involves the purchase of one or more precious
 15 metals; and

16 (b) requires, and under which the purchaser receives
 17 within 7 calendar days after payment in good funds of any
 18 portion of the purchase price, physical delivery of the
 19 quantity of the precious metals purchased. For the purposes
 20 of this subsection, physical delivery is considered to have
 21 occurred if, within the 7-day period, the quantity of
 22 precious metals, whether in specifically segregated or
 23 fungible bulk, purchased by such payment is delivered into
 24 the possession of a depository (other than the seller) that:

25 (i) (A) is a financial institution (meaning a bank,

1 savings institution, or trust company organized under or
 2 supervised pursuant to the laws of the United States or of
 3 this state);

4 (B) is a depository the warehouse receipts of which are
 5 recognized for delivery purposes for any commodity on a
 6 contract market designated by the commodity futures trading
 7 commission; or

8 (C) is a storage facility licensed by the United States
 9 or any agency of the United States; and

10 (ii) issues, and the purchaser receives, a certificate,
 11 document of title, confirmation, or other instrument
 12 evidencing that such the quantity of precious metals has
 13 been delivered to the depository and is being and will
 14 continue to be held on the purchaser's behalf, free and
 15 clear of all liens and encumbrances other than:

16 (A) liens of the purchaser;

17 (B) tax liens;

18 (C) liens agreed to by the purchaser; or

19 (D) liens of the depository for fees and expenses that
 20 previously have been disclosed to the purchaser.

21 (20) a transaction involving a commodity investment
 22 contract solely between persons engaged in producing,
 23 processing, using commercially, or handling as merchants
 24 each commodity subject to the contract or any byproduct of
 25 the commodity;

(21) any an offer or sale of a security to an employee of the issuer, pursuant to an employee stock ownership plan qualified under section 401 of the Internal Revenue Code of 1986."

Section 2. Section 90-8-102, MCA, is amended to read:

"90-8-102. Declaration of policy. (1) The legislature finds and declares that:

(a) economic insecurity due to unemployment is a serious menace to the health, safety, and general welfare of not only the affected people but of the people of the entire state;

(b) involuntary unemployment, with its resulting burden of indigency, falls with crushing force upon unemployed workers and ultimately on the state itself in the form of public assistance and unemployment compensation payments; and

(c) unemployment causes a migration of Montana workers and families seeking jobs and establishing homes elsewhere, which deprives the state of its most valuable resource, its people, and reduces the tax base of local governments, impairing their ability to provide basic services.

(2) (a) The legislature further finds that the best method of combating unemployment and protecting Montana against the loss of its people is by promoting, stimulating, developing, rehabilitating, and revitalizing the business

prosperity and economic welfare of the state and its citizens.

(b) To accomplish this goal, the legislature seeks to encourage the formation of venture and equity capital in Montana for use in diversifying, strengthening, and stabilizing the Montana economy by increasing Montana employment and business opportunities while protecting the people's constitutional right to a clean and healthful environment.

(3) The legislature further finds that:

(a) private investment of venture and equity capital in the Montana economy will be encouraged and promoted by making tax credits available to taxpayers investing in a Montana capital companies company or in a Montana small business investment capital company;

(b) demands on state revenues restrict the financial ability of the state to make unlimited tax credits available for investment purposes and require that the state place reasonable limits on the total amount of tax credits to be made available for investment incentive;

(c) establishment of a rational tax credit program which gives priority to investments in capital companies in the order in which they are qualified or in a Montana small business investment capital company will encourage prompt private investment in Montana businesses.

(4) The legislature further finds that use of money from the Montana in-state investment fund established by 17-6-306 to purchase debentures issued by a capital company or a Montana small business investment capital company will promote the business prosperity and economic welfare of the state and its citizens."

Section 3. Section 90-8-104, MCA, is amended to read:

"90-8-104. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments provided for in 2-15-1808.

(2) "Capital base" means equity capital raised by a certified Montana capital company or by a certified Montana small business investment capital company for which tax credits were claimed under this chapter.

(3) "Certified Montana capital company" or "certified Montana small business investment capital company" means:

(a) a development credit corporation created pursuant to Title 32, chapter 4; or

(b) a profit or nonprofit entity organized and existing under the laws of Montana, created for the purpose of making venture or risk capital available for qualified investments and that has been certified by the board.

(4) "Montana business" means a business which is

located or principally based within Montana.

(5) "Qualified investment" means:

(a) a debt or equity financing of a Montana business that meets both of the following criteria:

(i) the business is engaged in one or more of the following activities:

(A) manufacturing;

(B) agricultural, fishery, or forestry production and processing;

(C) mineral production and processing, except for conventional oil and gas exploration;

(D) recognized nonfossil forms of energy generation as defined in 15-32-102;

(E) transportation;

(F) research and development of products or processes associated with any of the activities enumerated in (A) through (E) above;

(G) wholesale or retail distribution activities for which products produced in Montana comprise 50% or more of the gross sales receipts;

(H) any activity conducted in the state for which 50% or more of the gross receipts are derived from the sale of products or services outside Montana; and

(I) tourism; and

(ii) the business is a small business as defined in

rules adopted by the board; or

(b) a debt or equity financing of a business outside Montana if such investment is likely to produce a qualified investment in Montana, as long as such investment does not exceed 25% of the capital base of the capital company.

(6) "Qualified Montana capital company" means a certified Montana capital company that has been designated a qualified capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202.

(7) "Qualified Montana small business investment capital company" means a certified Montana small business investment capital company that has been designated a qualified small business investment capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202."

Section 4. Section 90-8-201, MCA, is amended to read:

"90-8-201. Certification of Montana capital companies -- certification of a Montana small business investment capital company. (1) From The board shall certify one Montana small business investment capital company, and from time to time the board shall certify Montana capital companies. A company seeking to be certified as a Montana capital company must or as the Montana small business investment capital company shall make written application to

the board on forms provided by the board. The application must contain the information required by 90-8-204 and such other information as that the board requires. The application and certificate must specify the level of capitalization that the company expects to qualify for the tax credits provided for in 90-8-202.

(2) The application must show that the applicant's purpose is to increase the general economic welfare of the state of Montana by:

(a) making investment capital available to businesses in Montana; and

(b) allowing for investment of up to 25% of its capital base in businesses outside Montana if there is a substantial likelihood that such investment will produce a qualified investment in Montana.

(3) Certifiable applicants include but are not limited to local and community development corporations, small business administration 503 corporations, and small business investment companies.

(4) Certification is a prerequisite to and must be completed before seeking designation as a qualified capital company or as the qualified Montana small business investment capital company.

(b) To be eligible for certification under this section as the Montana small business investment capital company,

the applicant shall commit to:

(a) utilize the tax credits to accumulate private capital with the intention of being designated a small business investment corporation by the United States small business administration as provided in Title III of the Small Business Act of 1958, as amended, and as implemented under 13 CFR 107; and

(b) target its investments as a small business investment capital company toward commercialization projects emerging from centers of excellence and entrepreneurship, federal laboratories, the federal small business innovative research program, the federal cooperative research and development agreement program, Montana university system research and development, the Montana board of science and technology development (second stage), incubators, community development block grant programs with the objective of providing significant investment opportunities in an area where economic development capital is limited, and projects emerging from economic development programs of Montana certified communities."

Section 5. Section 90-8-202, MCA, is amended to read:

"90-8-202. Designation of qualified Montana capital companies -- designation of qualified Montana small business investment capital company -- tax credit. (1) The board shall designate as:

(a) qualified Montana capital companies those certified companies that have been privately capitalized at a minimum level of \$200,000; or

(b) the qualified Montana small business investment capital company a company that has been privately capitalized at a minimum level of \$500,000.

(2) A certified company seeking designation as a qualified Montana capital company or as the qualified Montana small business investment capital company must make written application to the board on forms provided by the board. The application must contain the information required by 90-8-204 and such other information as that the board requires.

~~(2)~~(3) (a) The total amount of tax credits authorized for a single qualified capital company or the qualified Montana small business investment capital company may not exceed \$1,500,000, except that the qualified Montana small business investment capital company must receive all remaining tax credits under this section available as of January 1, 1991. In the event the capitalization of the a qualified capital company is later increased, the company may apply for authorization of additional tax credits within the foregoing limitation.

(b) The total credits authorized for all companies may not exceed a total of \$1 million prior to June 30, 1985. The

total credits authorized for all companies between July 1, 1985, and June 30, 1987, may not exceed \$1 million plus any portion of the \$1 million available for authorization before June 30, 1985, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1987, and June 30, 1989, may not exceed \$3 million plus any portion of the credits available for authorization before June 30, 1987, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1989, and June 30, 1991, may not exceed \$3 million plus any portion of the credits available for authorization before June 30, 1989, that is allocated to qualified companies.

†3†(4) (a) The Before January 1, 1991, credits shall must be allocated to qualified companies in the order that completed applications for designation as qualified capital companies are received by the board, and the board shall certify to each such company its appropriate allocation.

(b) All tax credits allowed under subsection (3) that are not allocated as of January 1, 1991, must be allocated to the qualified Montana small business investment capital company, and the board shall certify the allocation to the company.

†4†(5) Investors in a qualified Montana capital company or in the qualified Montana small business investment capital company are entitled to the tax credits provided for

in subsection †5†(6). Funds invested in a certified company prior to designation as a qualified Montana capital company or as the qualified Montana small business investment capital company may, at the discretion of the investor, be placed in an escrow account in a Montana financial institution pending designation of the company as a qualified Montana capital company or as the qualified Montana small business investment capital company.

†5†(6) Subject to the provisions of subsections †2†(3) and †8†(9), an individual, small business corporation, partnership, trust, decedent's estate, or corporate taxpayer that makes a capital investment in a qualified Montana capital company or the qualified Montana small business investment capital company is entitled to a tax credit equal to 50% of the investment, up to a maximum credit of \$150,000 per taxpayer, except that, as applied to the small business investment capital company, the maximum tax credit is \$250,000 per taxpayer. The credit may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter 30, 31, or 35. The credit for investments by a small business corporation electing to be taxed under 15-31-202 or a partnership may be claimed by the small business corporation shareholders or the partners.

†6†(7) The tax credit allowed under subsection †5†(6) is to be credited against the taxpayer's income tax

liability or coal severance tax liability for the taxable year in which the investment in a qualified Montana capital company or the qualified Montana small business investment capital company is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be carried back or carried forward in the following manner:

(a) If the sum of the amount of credit for the current taxable year plus the amount of credit, if any, carried forward from a previous taxable year exceeds the taxpayer's tax liability for the current taxable year, the excess must be carried back as a credit to the 3 preceding taxable years and, if the full credit remains unused, carried forward as a credit to the 15 succeeding taxable years.

(b) The amount of unused credit must be used to offset the entire tax liability of each of the 18 taxable years, beginning with the earliest and commencing to the next succeeding year until the credit is exhausted.

~~(7)~~(8) The tax credit provided for in this section is available only to those taxpayers who invest in a qualified Montana capital company within 4 years of July 1, 1987, or in the qualified Montana small business investment capital company within 4 years of July 1, 1991.

~~(8)~~(9) (a) An individual, small business corporation, partnership, or corporate taxpayer who obtains the tax

credit allowed under subsection ~~(5)~~ (6) may not obtain credits in excess of the ~~\$150,000-limit~~ limits contained in subsection ~~(5)~~ (6) by making investments as more than one entity.

(b) A partner or shareholder in a small business corporation may not obtain more than \$150,000, or not more than \$250,000 in the case of a partner or shareholder in the qualified Montana small business investment capital company, in credits as an individual and as the partnership or small business corporation. A corporate taxpayer that obtains the maximum ~~\$150,000---credit~~ credits allowed under this subsection (9)(b) may not obtain additional credits through investments by wholly owned subsidiaries or affiliates. An individual, small business corporation, partnership, or corporate taxpayer who obtains the tax credit allowed under subsection (6) may not claim deduction under the provisions of Title 15, chapter 30 or 31, for donation of stock in the qualified Montana small business investment capital company."

Section 6. Section 90-8-203, MCA, is amended to read:

"90-8-203. No recapture -- unqualified investments. If the amount invested by a taxpayer in a qualified Montana capital company or in the qualified Montana small business investment capital company is not used by the company for qualified investments as provided in 90-8-301, the taxpayer

1 is not subject to a recapture provision for any tax credit
2 claimed by him but the company is subject to the penalty
3 provided for in 90-8-301(3)(4)."

4 **Section 7.** Section 90-8-204, MCA, is amended to read:

5 "90-8-204. Application requirements. A company applying
6 to become either a certified or qualified Montana capital
7 company or the certified or qualified Montana small business
8 investment capital company shall include in its application
9 evidence that it has disclosed or will disclose to all
10 investors the following:

11 (1) the condition that a tax credit is not available
12 for investment in a company until the company has been
13 designated a qualified Montana capital company or the
14 qualified Montana small business investment capital company
15 and the investor has received a certificate approving the
16 credit from the board;

17 (2) the condition that a tax credit will not be made
18 available until the a qualified capital company raises at
19 least \$200,000 in capital; and has been designated a
20 qualified capital company; or the qualified Montana small
21 business investment capital company raises at least \$500,000
22 in capital before July 1, 1995, and has been designated the
23 qualified Montana small business investment capital company
24 and the limits on tax credits that may be authorized; and

25 (3) the fact that the state of Montana is not liable

1 for damages in accordance with 90-8-205."

2 **Section 8.** Section 90-8-205, MCA, is amended to read:

3 "90-8-205. State liability disclaimed. The state of
4 Montana may not be held liable for any damages to an
5 investor in a Montana:

6 (1) capital company that fails to become designated as
7 a certified or qualified Montana capital company; or

8 (2) small business investment capital company that
9 fails to become designated as a certified or qualified
10 Montana small business investment capital company."

11 **Section 9.** Section 90-8-301, MCA, is amended to read:

12 "90-8-301. Qualified investments -- penalty --
13 extension permissible. (1) A qualified Montana capital
14 company receiving investments for which a taxpayer has
15 applied and received a tax credit must use its capital base
16 to make qualified investments according to the following
17 schedule:

18 (a) at least 30% of its capital base raised through
19 investments for which tax credits were taken within 3 years
20 of the date on which the certified company was designated as
21 a qualified capital company by the board and, in the case of
22 capital raised by a qualified Montana capital company under
23 an amended application for additional tax credits filed
24 after its initial designation as a qualified Montana capital
25 company, at least 30% of its capital base raised through

investments for which tax credits were taken within 3 years of the date on which the board approves the amended application;

(b) at least 50% of its capital base raised through investments for which tax credits were taken within 4 years of the date on which the certified company was designated as a qualified capital company by the board and, in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company, at least 50% of its capital base raised through investments for which tax credits were taken within 4 years of the date on which the board approves the amended application; and

(c) at least 70% of its capital base raised through investments for which tax credits were taken within 5 years of the date on which the certified company was designated as a qualified capital company by the board and, in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company, at least 70% of its capital base raised through investments for which tax credits were taken within 5 years of the date on which the board approves the amended application.

(2) The qualified Montana small business investment capital company receiving investments for which a taxpayer has applied and received a tax credit must use its capital base to make qualified investments according to the following schedule:

(a) of its capital base raised through investments for which tax credits were taken:

(i) 30% within 3 years of the date on which the certified company was designated as the qualified Montana small business investment capital company by the board or within 3 years of its designation as a small business investment corporation by the small business administration, whichever is later;

(ii) 50% within 4 years of the date on which the certified company was designated as the qualified Montana small business investment capital company by the board or within 4 years after its designation as a small business investment corporation by the small business administration, whichever is later; and

(iii) 70% within 5 years of the date on which the certified company was designated as the qualified Montana small business investment capital company by the board or within 5 years after its designation as a small business investment corporation by the small business administration, whichever is later; and

(b) of its capital base, in the case of capital raised through a loan from the small business administration pursuant to 13 CFR 107, as provided under this chapter.

(2)(3) Following each annual examination, the commissioner of financial institutions shall notify the department of revenue of any companies that are not in compliance with this section.

(3)(4) A qualified Montana capital company that fails to make qualified investments pursuant to subsection (1) or the qualified Montana small business investment capital company that fails to make qualified investments pursuant to subsection (2) shall pay to the department of revenue a penalty equal to all of the tax credits allowed to the taxpayers investing in that company during that time period, with interest at 1% a month from the date the tax credits were certified as allocated to the qualified Montana capital company or to the qualified Montana small business investment capital company. The department of revenue may abate the penalty if the capital company or the Montana small business investment capital company establishes reasonable cause for the failure to make qualified investments pursuant to subsection (1) or (2) and if the failure was not due to neglect on the part of the company.

(4)(5) The department of revenue may grant an extension of time in which to make qualified investments pursuant to

subsection (1) or (2) upon application by a capital company or the Montana small business investment capital company showing reasonable cause for an extension.

(5)(6) The department of revenue shall deposit any amount received under this subsection to the credit of the state general fund."

Section 10. Section 90-8-302, MCA, is amended to read:

"90-8-302. Restriction on investment. In addition to the requirements of 90-8-301, no more than 50% of the equity raised by a Montana capital company or by the Montana small business investment capital company may be invested in any one business, and no more than 25% of the total funds raised for which tax credits were claimed pursuant to the investment credit provisions of this chapter may be invested in any one business."

Section 11. Section 90-8-303, MCA, is amended to read:

"90-8-303. Conflict of interest. (1) (a) The members of the board, the commissioner of financial institutions, or a bank examiner may not have a monetary interest in or be a borrower from any a Montana capital company or from the Montana small business investment capital company, either directly or indirectly.

(b) These restrictions do not prohibit the board, acting as a whole, from purchasing debentures issued by a Montana capital company or by the Montana small business

1 investment capital company.

2 (2) A member of the investment committee of a Montana
3 capital company or of the Montana small business investment
4 capital company who has an interest in a venture that comes
5 before the committee for a vote shall disclose such the
6 interest and abstain from voting on investment in the
7 venture."

8 **Section 12.** Section 90-8-304, MCA, is amended to read:

9 "90-8-304. Application of securities law. In lieu of
10 registration under Title 30, chapter 10, a certified Montana
11 capital company or the certified Montana small business
12 investment capital company may file all disclosure
13 documents, along with a consent to service of process, with
14 the state securities commissioner. The commissioner may not
15 charge a fee for such the filing."

16 **Section 13.** Section 90-8-305, MCA, is amended to read:

17 "90-8-305. Sale of debentures. (1) A qualified Montana
18 capital company or the qualified Montana small business
19 investment capital company is authorized to issue and sell
20 debentures to the in-state investment fund established in
21 17-6-306.

22 (2) Proceeds received by a qualified Montana capital
23 company or by the qualified Montana small business
24 investment capital company from the sale of debentures
25 authorized in subsection (1) must be invested in accordance

1 with the provisions of 90-8-301, except that the time
2 periods for making qualified investments must be calculated
3 from the date the company sells the debentures to the
4 in-state investment fund."

5 **Section 14.** Section 90-8-311, MCA, is amended to read:

6 "90-8-311. Legislative review and oversight. The board
7 shall report on an annual basis to the revenue oversight
8 committee of the legislature concerning Montana capital
9 companies and the Montana small business investment capital
10 company."

11 **Section 15.** Section 90-8-312, MCA, is amended to read:

12 "90-8-312. Investment reporting and recordkeeping. (1)
13 Each qualified Montana capital company and each qualified
14 Montana small business investment capital company shall
15 report to the board on a quarterly basis:

16 (a) the name of each investor in the qualified Montana
17 capital company or in the qualified Montana small business
18 investment capital company who has applied for a tax credit;

19 (b) the amount of each investor's investment; and

20 (c) the amount of the tax credit allowed to the
21 investor and the date on which the investment was made.

22 (2) The board shall provide the information contained
23 in subsection (1) to the department of revenue on a
24 quarterly basis.

25 (3) The board shall provide each investor in a

1 qualified Montana capital company and each investor in the
 2 qualified Montana small business investment capital company
 3 with a certificate authorizing the tax credit, and the
 4 certificate ~~shall~~ must be submitted with each tax return
 5 requesting a credit under 90-8-202.

6 (4) Each qualified Montana capital company and the
 7 qualified Montana small business investment capital company
 8 shall report to the board on a quarterly basis all qualified
 9 investments that the company has made. The board shall share
 10 the information with the department of revenue, in order
 11 that the provisions of 90-8-301 may be complied with."

12 **Section 16.** Section 90-8-313, MCA, is amended to read:

13 "90-8-313. Examination. (1) At least once a year the
 14 bank examiners of the department of commerce shall examine
 15 the books and affairs of each Montana capital company and of
 16 each Montana small business investment capital company. The
 17 examination must address the methods of operation and
 18 conduct of the business of the Montana capital company or of
 19 the Montana small business investment capital company to
 20 determine if the company is abiding by the purposes of this
 21 chapter and that the funds received by the company have been
 22 invested within the time limits required for a qualified
 23 Montana capital company or for the qualified Montana small
 24 business investment capital company in 90-8-301.

25 (2) The department of commerce may examine under oath

1 any of the officers, directors, agents, employees, or
 2 investors of a Montana capital company regarding the affairs
 3 and business of the company. The department of commerce may
 4 issue subpoenas and administer oaths. Refusal to obey such a
 5 subpoena may at once be reported to the district court of
 6 the district in which the company is located, and the court
 7 shall enforce obedience to the subpoena in the manner
 8 provided by law.

9 (3) The cost of the annual review must be paid by each
 10 Montana capital company or by the Montana small business
 11 investment capital company in accordance with reasonable
 12 fees assessed by the department."

13 **Section 17.** Section 90-8-321, MCA, is amended to read:

14 "90-8-321. Decertification. (1) If the examination
 15 conducted pursuant to 90-8-313 discloses that a Montana
 16 capital company or the Montana small business investment
 17 capital company is not in compliance with the provisions of
 18 this chapter, the department of commerce may exercise any of
 19 the powers with regard to banks granted in Title 32, chapter
 20 1, part 5, and may seize the assets of the company and
 21 liquidate it. In the event of liquidation of the assets, any
 22 penalty imposed pursuant to 90-8-301 ~~shall~~ must be included
 23 in the claims to be paid.

24 (2) If in the discretion of the department of commerce
 25 the action allowed under subsection (1) is not required to

1 protect the company's investors, the department may place
 2 the company on notice that it will lose its certification as
 3 a Montana capital company or as the Montana small business
 4 investment capital company within a specified period of time
 5 if the company does not come into compliance with the
 6 provisions of this chapter. The department shall
 7 automatically decertify a Montana capital company or the
 8 Montana small business investment capital company that is
 9 assessed a penalty under 90-8-301~~3~~⁴.(4).

10 (3) As long as the department acts in good faith, the
 11 department and its employees and agents may not be held
 12 civilly or criminally liable or liable upon their official
 13 bonds for action taken under this section or for any failure
 14 to act under it.

15 (4) A Montana capital company or the Montana small
 16 business investment capital company may apply to the
 17 department for decertification."

18 NEW SECTION. Section 18. Saving clause. [This act]
 19 does not affect rights and duties that matured, penalties
 20 that were incurred, or proceedings that were begun before
 21 [the effective date of this act].

22 NEW SECTION. Section 19. Severability. If a part of
 23 [this act] is invalid, all valid parts that are severable
 24 from the invalid part remain in effect. If a part of [this
 25 act] is invalid in one or more of its applications, the part

1 remains in effect in all valid applications that are
 2 severable from the invalid applications.

3 NEW SECTION. Section 20. Retroactive applicability.
 4 [This act] applies retroactively, within the meaning of
 5 1-2-109, to events occurring after December 31, 1990.

6 NEW SECTION. Section 21. Effective date. [This act] is
 7 effective on passage and approval.

-End-

REP. BACHINI asked for a brief comment on the bill as to whether it is safe or not. Joanne Chance said they tend to agree with the Public Safety Division with the DOC. At this time they have not made any ventures into this field because they have relied on the national standards and adopted the Uniform Fire Code which overlaps and meshes quite well with the Uniform Building Code and Mechanical Code. The national standards are somewhat inconsistent. As it was pointed out, the NFPA simply does not address this issue, it doesn't specifically say that it is o.k. or that it's safe. It just doesn't prohibit it like the Mechanical Code does. It is her understanding that the Consumer Product Safety Commission is still studying the issue and has not come out with any recommendations. They support the amendments because they do not believe the Fire Marshall should be promulgating the rules. The present code recognizes the expertise of the DOC. They believe it would be preferable to leave that function there.

REP. ELLIS asked if the regulations covering natural gas are the same as those for propane. Mr. Kembel said they are not. Natural gas has a tendency to rise and dissipate.

Closing by Sponsor:

REP. GRADY explained the EXHIBIT 5 map shows the states that have restricted use as does Montana. The states that are regulated are the states with the heaviest use of propane. The percentage of home use of propane is entered here as EXHIBIT 6. There have been only two accidents in 30 years. Montana has very good preventive maintenance. He urged the amendments be put on the bill.

HEARING ON HOUSE BILL 863

REP. DAVE BROWN, HD 72, Butte Silver Bow, is in strong support of HB 863. This bill is a win win situation. It takes a problem with the current law in programs, makes some changes to the program in the process, and deals with the real economic development needs in Montana. HB 863 is about economic development capital. It takes the remaining tax credits allocated to the Board of Investments for capital companies and targets them into a single statewide small business investment capital company that is called a SBICC. This SBICC will be able to leverage approximately \$2 million in tax credits and \$36 million in small business loans. An 18 to 1 leverage. The SBICC stretches the state's economic development dollars about as far as they possibly can be stretched.

A brief background. The current Capital Company Act has come under some severe criticism for alleged self-dealing which did not seem to reflect legislative intent, and in fact, it did not reflect legislative intent. The State has decided to no longer allocate tax credits under the previous formula. This bill represents an acceptable alternative to that use of those funds.

There are several amendments the Committee will have in perfect form before the day is over.

He reiterated HB 863 is perhaps the most far reaching bill this session in terms of badly needed economic development capital for Montana's future growth. It is well thought out, it is broadly supported, and in the process of providing some significant economic development capital it eliminates the self-dealing abuses of the past. There are a number of development corporations. The Board of Investments and the Department of Commerce are here to answer questions, should you need them and he would try to do that as well. He urged the Committee's support.

Proponents:

Evan Barrett, Executive Director of the Butte Local Development Corporation, reminded when we spoke about two weeks ago about Economic Development, one of the things talked about was the need for economic development capital. He mentioned you would have the opportunity to vote on some things that would make a difference in that field. This is a key bill in that regard. HB 863 was worked out in cooperation with the Board of Investments, the DOC, local economic development organizations across the state and with the financial community. Specifics of the bill call for the creation of a single statewide small business capital investment company. It empowers the Board of Investments, which has currently been doing this, to select the capital company and designate it.

It allocates all remaining tax credits to this small business capital investment company. There is approximately \$2 million available now. It requires the SBICC to use those tax credits to raise \$3 million in private capital. It also requires the SBICC at that time to seek designation by the United States Small Business Administration as a federal SBIC. That enables the leveraging of the capital so that the \$3 million can garner \$9 million in federal monies, which makes it a \$12 million capital company. It requires targeted investments that are specified in the bill in small businesses across Montana. It opens the door for investments in 56 counties and in every locale on a debt basis. Loans to start up businesses are basically loans that would not be made by banks.

In achieving these things, it makes several modifications of existing laws. It takes the existing capital \$300,000 investment and raises it to \$500,000 for this company only. Likewise it increases the commensurate level of tax credit from \$150,000 to \$250,000. Not that there will be people lined up to put that much in, but that's the reason for the modifications. It will apply a 67% tax credit instead of the previous 50% as far as this company alone is concerned. It maintains key elements in the existing law as well. Its capital base must raise the tax credits which must be invested in Montana basic sector businesses according to a

strict timetable of the law. By having the company become a federal SBIC precludes the self-dealing abuses. Federal regulations do not allow any investment in any company that has the principals of the capital company involved in it. Following the federal guidelines eliminates the abuses. EXHIBIT ?? (Chart)

Ron Klaphake, Chief Executive Officer of the Missoula Economic Development Corporation, is in support of this particular bill. He spent the last three years trying on a statewide basis to put a venture capital company together working with US West and some of the research that was done two years ago. It is very difficult to raise the kind of dollars that is needed in a large enough sum. They have looked at the SBA program, the small business investment council. Talked about what was going on in Wyoming and reached the point where there is only one way they are going to get a large enough pool of capital to do the kind of investment that needed and that is to use the federal government's matching program and the SBIC is the only program they know of that makes that happen. He encouraged support of this so that they can get an SBIC in the State of Montana using the capital tax credits and thereby leveraging the SBA monies.

REP. LARSON said there are several new members on the Committee including himself, please explain the history of the Capital Company Act. Evan Barrett explained basically the bill was passed several years back creating capital tax credits to create capital companies. They got a 50% tax credit which created a 2 to 1 leverage of the money that was targeted into equity investments. A number of capital companies were formed around the state. About 90% of them did not meet the purpose of the Legislature. The Legislature meant to aggregate capital that was not previously delegated.

Dave Lewis, Board of Investments, explained they started out with \$2 million worth of tax credits. It was a 25% tax credit for each dollar invested in the Montana capital companies. They found they were not raising very much capital. In 1985 they raised it to a 50% tax credit, then subsequently increased it to \$4 million. It was increased again in 1987 to \$6 million and then to \$8 million in the 1989 session. They have allocated \$6 million of those tax credits. The legislative fiscal analyst did an evaluation of the Capital Companies for the legislative finance committee and pointed out some problems with it. They certainly did not have any differences with the report they submitted. They had some concerns about some shortcomings in the Act since they have been involved in administering it. Again, they have worked with Mr. Barrett on this particular piece of legislation, and Andy Poole is here from the DOC as well to indicate the fact that we think this does make some progress in cleaning the problems up. It would make some contributions to the Montana economy. Some of the capital companies have not done a very good job in meeting the legislative intent. They have certainly complied with the letter of the law, but there have been some questions about the effectiveness of the investments that were made by some of the

companies to date.

Opponents: None

Questions from the Committee:

REP. RICE reminded they had a conversation about a week or so ago about the hesitancy of some capital companies to consider this as capital at risk. One of the reasons it was decided to give a tax credit was to make more risky capital available. Please address this in regard to this bill. Is this going to make more capital available for less secure investments than the ones we want to have happen? Mr. Poole thought it would. The reason is HB 901 has been introduced by REP. BARDANOUVE. That bill is scheduled for hearing in this Committee on March 8. That hearing date needs to be changed because it is too late. He will check with the Chief Clerk's office about HB 901. HB 863 will hinge on the support and passage of HB 901. It does raise \$9 million dollars in federal funds to match \$3 million to be raised in the State. We have created the first large capital fund and it is very important to Montana. Under regulations that go along with federal money and the money invested in this some of the things that have been seen before and are concerned about wouldn't happen again.

REP. RICE said if she put thousands of dollars into the standard capital company, basically she gets a tax credit for 67% of the investment. That tax credit can be used over a period of 15 years, and goes back three years also.

REP. BENEDICT asked why there is a retroactive applicability date in this. Mr. Poole explained the reason it is in there is because the 1989 dollars run out June 30, 1991, and after that there are no more tax credits available. When the LFA came out with their report in order to function they needed a retroactive date not to carry over any additional tax credits until the account was looked at. There were credits some available to be allocated.

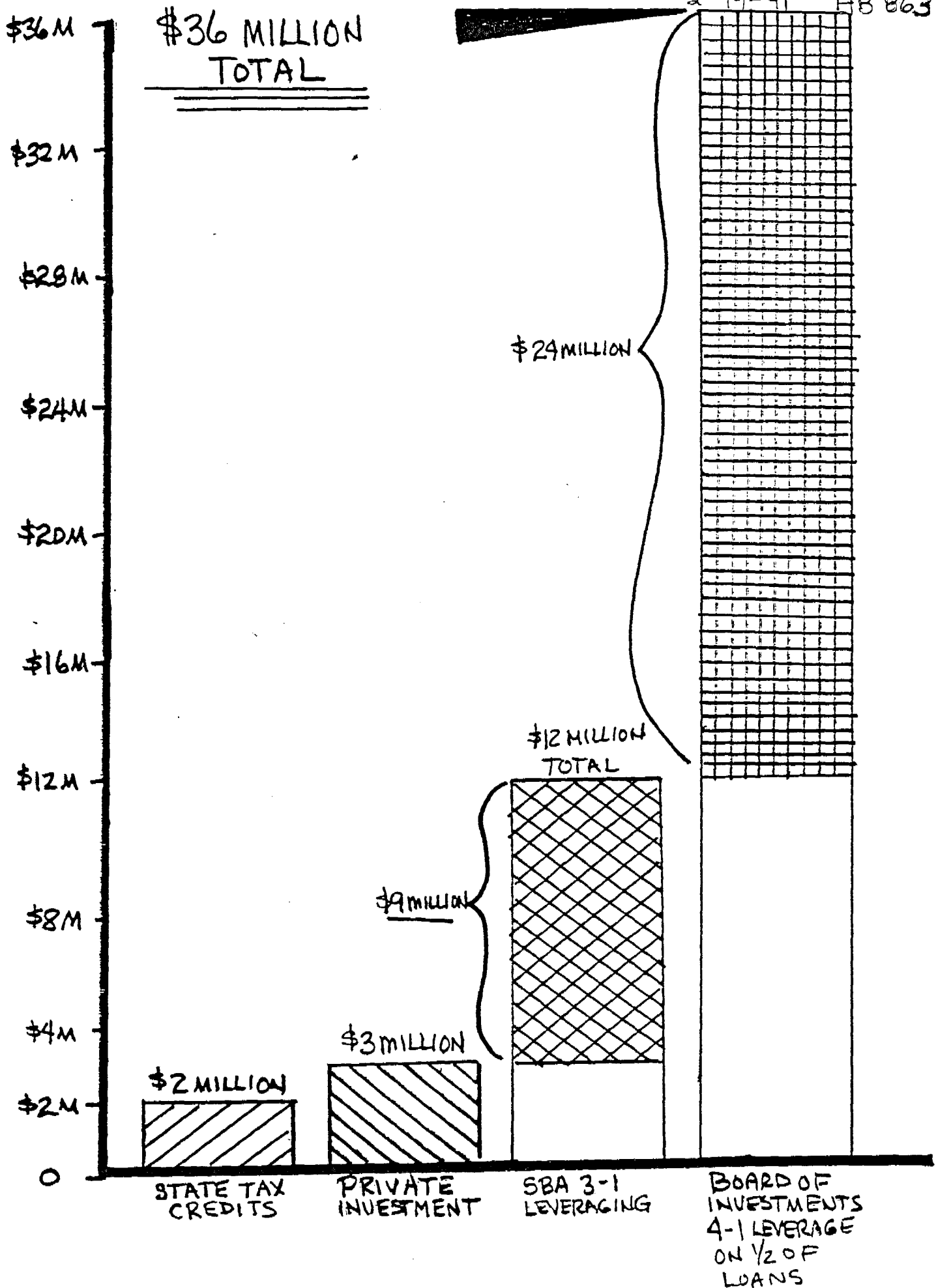
REP. BROWN said HB 901 was on the list the Senate approved that doesn't need to be heard before transmittal. Mr. Poole said that is essentially the bill that is needed to make this work.

Closing by Sponsor:

REP. BROWN promised amendments will be in the Committee by the end of the day. This is the most farreaching economic measure before this session to get new or existing companies going. With all of the inability to get capital, this can help.

HEARING ON HOUSE BILL 776

REP. ERNEST BERGSAGEL, HD 17, explained there is no clear procedure under current law to handle property abandoned in storage units without paying the rent. It is an Act providing



MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By REP. BOB BACHINI, CHAIRMAN, on February 20, 1991, at 7:15 a.m.

ROLL CALL

Members Present:

Bob Bachini, Chairman (D)
Sheila Rice, Vice-Chair (D)
Joe Barnett (R)
Steve Benedict (R)
Brent Cromley (D)
Tim Dowell (D)
Alvin Ellis, Jr. (R)
Stella Jean Hansen (D)
H.S. "Sonny" Hanson (R)
Tom Kilpatrick (D)
Dick Knox (R)
Don Larson (D)
Scott McCulloch (D)
Bob Pavlovich (D)
John Scott (D)
Don Stepler (D)
Rolph Tunby (R)
Norm Wallin (R)

Staff Present: Paul Verdon, Legislative Council
Jo Lahti, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON HOUSE BILL 863

Motion: REP. SHEILA RICE, HD 36, Great Falls, moved HB 863 Do Pass.

Motion: REP. SHEILA RICE moved HB 863 BE AMENDED. EXHIBIT 1.

REP. RICE said the first three amendments are stylistic and don't change the bill much. Amendment #4 subsection (c) is added to ensure SBIC will be statewide. Amendment #5 is technical. Amendment #6, Page 17, deals with the tax credit. This allows new credits that may become available through reversion or if the Legislature provides more, they will be captured in the statewide SBIC. Amendments #7 and #8 are technical. Amendment #9 adds some language to be certain that the investments are qualified

investments, which is a timing thing. Tax credits from Montana need to be used by a certain time. Federal dollars have a longer period of time in which to be used.

Discussion:

REP. NORM WALLIN, HD 78, Bozeman, asked if this was Federal Deposit Insurance. Evan Barrett, Butte Local Development Corporation, Butte, explained these are Federal debentures. The Small Business Administration sells debentures that create a pool of capital from which the SBIC is allowed to borrow. It is loaned \$3 federal money for every \$1 of local monies. The money is then loaned out. Three-fourths of the money is federal money from the sale of debentures.

REP. WALLIN asked if there is any guarantee behind this borrowing from the Federal Government. EXHIBIT 2 explains The Small Business Investment Company (SBIC) program. Mr. Barrett said essentially the funds are borrowed by the SBIC for an extended period of time.

REP. WALLIN said it doesn't operate like a bank. Mr. Barrett said there is \$12 million available. It is a small business bank that is backed by the SBA monies to make loans that might be riskier than a bank would make. Basically, banking principles apply.

REP. WALLIN asked if tax credits accrue from losses. Mr. Barrett said tax credits were previously allocated by the Legislature for the use of capital to be an enhancement to capture the federal money. If there are any additional tax credits they could go into the capital companies.

Mr. Barrett corrected REP. RICE'S statement that if there are any additional tax credits they will be allocated according to the statute by the Board of Investments. An amendment on Page 7 would read, "a transaction in the securities of a certified Montana capital company".

Substitute Motion/Vote: REP. SHEILA RICE moved to amend HB 863 as outlined in EXHIBIT 3 (an updated version of amendments discussed as EXHIBIT 1). Motion CARRIED unanimously.

Motion/Vote: REP. SHEILA RICE moved HB 863 DO PASS AS AMENDED. Motion CARRIED unanimously.

EXECUTIVE ACTION ON HOUSE BILL 169

REP. TIM DOWELL, HD 5, Kalispell, said there are loggers in the business who feel they are not being treated fairly at the mills. Problems were related during testimony. A proposed new gray bill addresses this. The cost of the program is based on the value of a load of logs. 1,000 board feet of logs might have a value of \$180. Seven cents each on the value of each 1,000 board feet

HOUSE OF REPRESENTATIVES

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL

DATE Feb. 20, 1991

[illegible]

HOUSE STANDING COMMITTEE REPORT

February 20, 1991

Page 1 of 2

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 863 (first reading copy -- white) do pass as amended .

Signed: _____

Bob Bachini
Bob Bachini, Chairman

And, that such amendments read:

1. Page 7, line 1.

Following: "transaction"

Strike: "by"

Insert: "in the securities of"

2. Page 15, line 7.

Strike: "and"

3. Page 15, line 15.

Following: "stage),"

Insert: "small business"

4. Page 15, line 16.

Following: "programs"

Insert: ", and projects emerging from economic development programs of Montana certified communities"

5. Page 15, lines 18 through 20.

Following: "limited" on line 18

Strike: remainder of line 18 through "communities." on line 20

Insert: "; and

(c) consider investment opportunities originating in any Montana county."

6. Page 16, line 4.

Strike: "qualified"

Insert: "certified"

7. Page 17, line 23.

Following: line 22

Insert: "(c) If the legislature provides additional tax credits under this chapter after June 30, 1991, or if tax credits become available by reversion to the board by a capital company or by the qualified Montana small business

investment capital company, those additional or reverted tax credits may be allocated by the board to qualified capital companies or to the qualified Montana small business investment capital company in accordance with this chapter and the rules of the board."

8. Page 20, line 7.

Strike: "a partner or shareholder in"

9. Page 24, line 25.

Strike: "and"

Insert: "or"

10. Page 25, line 3.

Following: "chapter"

Insert: "except as provided in subsection (2)(a)"

11. Page 29, line 16.

Strike: "each"

Insert: "the qualified"

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

BUSINESS & ECON. DEVELOPMENT

COMMITTEE

BILL NO. HB 667
HB 683

DATE FEB. 20, 1991

SPONSOR(S) REP. DARKO

REP. SIMPKINS

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
GEORGE PHILLIPS	NAT. ASSOC. IND. INS. ALLIANCE AMER. INS.	HB 683		X
James T. Zander	Ms. Ind. Assn	H 667		✓
Maqueline Terrell	Am. Ins. Assoc.	HB 683		X w/amt
Karl Emery	NF Landlord Assoc	HB 748	✓	
Steve Browning	State Farm Insurance	HB 683	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

SECRETARY-DARA ANDERSON

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0774	2/26	3/13		CONCUR		3/13
JOHNSON, ROYAL			ALLOW SPECIFIED LICENSEES TO IMPORT ILLEGAL GAMBLING DEVICES			
HB0779	2/25	3/08		CONCUR		3/08
CROMLEY, BRENT			LIMIT BANKRUPTCY STAYS OF FORECLOSURES UNDER SMALL TRACT FINANCING ACT			
HB0782	2/26	3/11		CONCUR AS AMENDED		3/11
HANSEN, STELLA			CLARIFY REQUIREMENTS OF THE MONTANA JUNK VEHICLE PROGRAM			
HB0816	2/25	3/08		CONCUR AS AMENDED		3/13
HARRINGTON, DAN			MAKE RECREATIONAL VEHICLES SUBJECT TO PROVISIONS OF AUTOMOBILE LEMON LAW			
HB0819	2/26	3/11		CONCUR AS AMENDED		3/11
RUSSELL, ANGELA			PROMOTE STATE-TRIBAL COOPERATION IN ECONOMIC DEVELOPMENT AND TOURISM			
HB0853	2/27	3/14		CONCUR AS AMENDED		3/18
SCOTT, JOHN			REVISE PORT AUTHORITY LAWS			
HB0854	2/26	3/11		CONCUR		3/11
FOSTER, MIKE			INSURANCE FUNDING FOR LONG-TERM CARE THROUGH LIFE INSURANCE PRODUCTS			
HB0863	2/26	3/11		CONCUR AS AMENDED		3/12
BROWN, DAVE			AUTHORIZING TAX CREDITS FOR SMALL BUSINESS INVESTMENT COMPANY			
HB0987	3/26	4/02		CONCUR AS AMENDED		4/02
CROMLEY, BRENT			GENERALLY REVISE THE LAW RELATING TO REGULATION OF PUBLIC ACCOMMODATIONS			
HB0988	3/26	4/02		CONCUR AS AMENDED		4/02
CROMLEY, BRENT			GENERALLY REVISE LAWS REGULATING CAMPGROUNDS, TRAILER COURTS, AND WORK CAMPS			
HB0995	4/09	4/12		CONCUR		4/12
HARPER, HAL			WORKERS' COMPENSATION BONDS ISSUED TO PAY UNFUNDED LIABILITY			

the nation.

EXECUTIVE ACTION ON HOUSE BILL 854

Motion:

Senator Thayer moved that HB 854 be concurred in.

Discussion:

None

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

The motion made that HB 854 be concurred in passed unanimously. Senator Hager will carry this bill to the floor.

HEARING ON HOUSE BILL 863

Presentation and Opening Statement by Sponsor:

Representative Dave Brown, sponsor of the bill, stated that this bill is known as the small business investment capital company act. This bill is a win win situation. It takes the problem with current law on programs, makes some changes to those programs, and deals with the real economic development need in Montana. That is available capitol. This bill is about economic development capital (See Exhibit 9).

Proponents' Testimony:

Evan Barrett, executive director of the Butte local development corporation and the administrator of the southwest Montana development corporation, proposed some amendments to the bill (See Exhibit 10).

Senator Tveit, stated that he supports the bill with some proposed amendments (See Exhibit 11).

Dave Lewis, executive director of the state board of investments, stated that the board supports the bill as it was originally submitted. It took all of the remaining tax credits as of January 1, 1991, and set them aside for allocation to a small business and investment company that would be selected by the board. There was an amendment that was added in the house committee on page eighteen, section C. It states that the board may allocate any additional reverted tax credits to a qualified capitol company.

Robyn Young, deputy insurance commissioner representing the state auditor, stated that they support HB 863, because it closes the door on the problems they had with the Montana small capitol company act. It makes more money available. They have a problem with the language in the amendment on page eighteen subsection C, lines eight through sixteen. They do not think that they are necessary, and prefer that this section be deleted.

Opponents' Testimony:

None

Questions From Committee Members:

Senator Thayer asked how will we determine where SBIC will be. Who is going to make that determination.

Dave Lewis replied that this bill does say that the board of investments will make the selection. They will have to advertise for applicants.

Evan Barrett stated that they have been working with the high planes development authority in Great Falls, Montana.

Senator Gage asked if under this bill, they would have to allocate credits.

Dave Lewis replied that under this bill, we would feel that the legislature had given them the direction that they sought. They would allocate the credits to the SBIC.

Senator Lynch stated that he is a real opponent to something that is on passage of approval, but the October 1 date would hinder their ability to start moving.

Representative Brown stated that was correct.

Closing by Sponsor:

Representative Brown closed by saying that on page eighteen, subsection C this section was added to allow that if any capitol credits are reverted back to the board of investments, they can add to this total to further expand their ability to grant loans. Senator Mazurek has agreed to carry this bill on the floor.

EXECUTIVE ACTION ON HOUSE BILL 819

Motion:

Senator Franklin moved to amend HB 819 by striking "for tourism" from page four, line twenty two, and replacing it with "including and not limited to tourism".

Senator Franklin moved to amend HB 819 by striking "for tourism" from page four, line twenty two.

Senator Franklin moved that HB 819 be concurred in.

Discussion:

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

DATE 3/11/91

52ND LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BRUSKI	X		
SENATOR FRANKLIN	X		
SENATOR GAGE	X		
SENATOR HAGER	X		
SENATOR NOBLE	X		
SENATOR THAYER	X		
SENATOR WILLIAMS	X		
SENATOR KENNEDY	X		
SENATOR LYNCH	X		

Each day attach to minutes.

HB 863

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 9DATE 3/11/91BILL NO. HB 863

**CREATING ECONOMIC DEVELOPMENT CAPITAL THROUGH A STATE-WIDE
SMALL BUSINESS INVESTMENT CAPITAL COMPANY
(SBICC)**

- **CREATES THE SBICC (BOARD OF INVESTMENTS DESIGNATION)**
 - **ALLOCATES REMAINING CAPITAL COMPANY TAX CREDITS TO THE SBICC**
 - **REQUIRES SBICC TO BECOME FEDERAL SMALL BUSINESS INVESTMENT CORPORATION (UNDER U.S. SBA)**
 - **CAN RESULT IN A 3-1 LEVERAGING OF FEDERAL SBA DOLLARS**
 - **CAN RESULT IN ANOTHER 2-1 LEVERAGING OF BOARD OF INVESTMENTS LOAN PROGRAM DOLLARS**
 - **TARGETS MONTANA SMALL BUSINESS INVESTMENTS (PRIMARILY LOANS) IN ALL 56 MONTANA COUNTIES**
 - **FEDERAL S.B.A. DESIGNATION TRIGGERS FEDERAL REGULATIONS PRECLUDING "SELF-DEALING" ABUSES OF SOME EXISTING MONTANA CAPITAL COMPANIES**
-

THE BOTTOM LINE:

**ALLOCATION OF REMAINING CAPITAL COMPANY TAX CREDITS
TO SBICC CAN PRODUCE**

\$48 MILLION

IN MONTANA SMALL BUSINESS LOANS

AMENDMENTS TO HB 863

On page 16, line 14
Strike: "CERTIFIED"
Insert: "qualified"

On page 16, line 15
Strike: "a"
Insert: "the certified Montana small business investment
capital"

On page 16, line 15
Strike: "that"
Insert: "once it"

ADDITIONAL AMENDMENT TO HB 863

On page 19, line 10
Following: "the"
Insert: "qualified"

On page 19, line 12
Insert: "and the tax credit limitation relating to a capital
investment in the qualified Montana small business investment
capital company shall be in addition to any other tax credit
limitation in [this section]"

AMENDMENTS TO HB 863
Third Reading Copy
Requested by Sen. Tveit
For the Committee on Business and Industry

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 11
DATE 3/11/91
BILL NO. H6863

1. Page 16, lines 3 and 4.
Following: "ENSURE THAT"
Strike: "UP TO"
insert: "not less than"

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
NE PHILLIPS	NORTHWESTERN TELEPHONE SYSTEMS	HB610	✓	
SWEENEY	PSC	" "		
Halliman	PSC	" "		
EX MANUEL	SELF	HB610	✓	
Jim Hayhurst	USWEST COMMUNICATIONS	HB610	✓	
Mike Foster	Rep., House Distr. #32	HB854	✓	
Evan Evilsizer	PSC	HB610	✓	
Atty Brightwell	ATTY	HB610	✓	
Bob Nelson	Consumer Counsel	HB610	✓	
BOLES	INT. CHAMBER	HB 863	X	
Ed Frazier	CITY - OF HEALTH GT Falls	782	amend ✓	
Ken Williams	Entech	HB-610	✓	
Don Dilliard	Dept. of Health	HB782	✓	
Duane Robertson	Dept of Health	HB782	✓	
TOM HOPGOOD	GTE	HB610	✓	
Tom Hopgood	Health Ins. Assoc. America	HB854	✓	
Clark N. Sprang	IBEW Local 206	HB610	✓	
JOAN MANDEVILLE	MONT. TEL. ASSOC.	HB610	✓	
Bill LEARY	MONT. BANKERS ASSOC.	HB863	✓	
Tom Eberhart	US WEST	HB610	✓	
Dora Lewis	ROTHMISTMAN	HB863	✓	
EVAN BARRETT	BUTELocal DEV. CORP.	HB863	✓	
Robyn Young	State Auditor/Securities Dept	HB863	✓	
Hervey K. Lohr	Hank's Salvage & Recycling	HB782	X	

Recommendation and Vote:

The motion made that HB 248 be concurred in passed unanimously. Senator Doherty will carry the bill to the floor.

EXECUTIVE ACTION ON HOUSE BILL 197Motion:

Senator Thayer moved that HB 197 be concurred in.

Discussion:

None

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

The motion made that HB 197 be concurred in passed unanimously. Senator Thayer will carry the bill to the floor.

EXECUTIVE ACTION ON HOUSE BILL 863Motion:

Senator Thayer moved that a statement of intent be added to the bill.

Senator Noble moved the amendment proposed by Senator Tveit.

Senator Noble moved the amendment proposed by Mr. Barrett.

Senator Thayer moved to amend section C, changing "may" to "shall".

Senator Thayer moved that HB 863 be concurred in as amended.

Discussion:

Senator Lynch stated that a statement of intent is needed to take the small business capital company, and all of the local area development corporations have been after something like this for a long time. It possibly could infuse as much as forty eight million dollars into the loan program. They need to have the small business investment capital company in order to do it, other than the individuals.

Senator Thayer stated that we leave the rule making up to the department. That is the one thing that the legislature does wrong. It is an extra precaution that the legislature write its legislative intent in the bill. If their rules come out substantially different, then it is automatically applied. It

will be the intent of the legislature that this company be selected on the basis of its geographic makeup from representing the whole state.

Amendments, Discussion, and Votes:

The motion to move the amendments proposed by Senator Tveit passed unanimously.

The motion to move the Barrett amendments passed unanimously.

The motion made to amend section C, changing "may" to "shall" passed unanimously.

Recommendation and Vote:

The motion made that a statement of intent be added to the bill passed unanimously.

The motion made that HB 863 be concurred in as amended passed unanimously. Senator Mazurek will carry the bill to the floor.

EXECUTIVE ACTION ON HOUSE BILL 610

Motion:

Senator Williams moved that HB 610 be concurred in.

Discussion:

None

Amendments, Discussion, and Votes:

None

Recommendation and Vote:

The motion made that HB 610 be concurred in passed by a 7 to 2 votes.

ADJOURNMENT

Adjournment At: 11:30 a.m.

ROLL CALL

BUSINESS AND INDUSTRY COMMITTEE

DATE

3/12/91

52ND LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BRUSKI	Y		
SENATOR FRANKLIN	X		
SENATOR GAGE	X		
SENATOR HAGER	X		
SENATOR NOBLE	X		
SENATOR THAYER	X		
SENATOR WILLIAMS	X		
SENATOR KENNEDY	X		
SENATOR LYNCH	X		

Each day attach to minutes.

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/12/91 Bill No. 43863 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN	X	
SENATOR BRUSKI	X	
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON

Secretary

J.D. LYNCH

Chairman

Motion:

SMT OF INTENT

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/12/91 Bill No. HB863 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN	X	
SENATOR BRUSKI	X	
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON

Secretary

J.D. LYNCH

Chairman

Motion: AMENDMT FROM TWEET

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/12/91 Bill No. HB863 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	X	
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN	X	
SENATOR BRUSKI	X	
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON

J.D. LYNCH

Secretary

Chairman

Motion: BARRETT AMENDMENTS

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/12/91 Bill No. HB863 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	/	
SENATOR THAYER	X	
SENATOR NOBLE	X	
SENATOR HAGER	X	
SENATOR GAGE	X	
SENATOR FRANKLIN	X	
SENATOR BRUSKI	X	
SENATOR KENNEDY	X	
SENATOR LYNCH	X	

DARA ANDERSON

Secretary

J.D. LYNCH

Chairman

Motion: Sec C. AMEND CHG FROM 'MAY' TO
'SHAZZ'

ROLL CALL VOTE

SENATE COMMITTEE BUSINESS AND INDUSTRY

Date 3/12/91 Bill No. HB863 Time 10 a.m.

NAME	YES	NO
SENATOR WILLIAMS	Y	
SENATOR THAYER	Y	
SENATOR NOBLE	Y	
SENATOR HAGER	Y	
SENATOR GAGE	Y	
SENATOR FRANKLIN	Y	
SENATOR BRUSKI	Y	
SENATOR KENNEDY	Y	
SENATOR LYNCH	Y	

DARA ANDERSON

Secretary

J.D. LYNCH

Chairman

Motion: BE CONCURRED IN AS AMENDED
MAZUREK

Amendments to House Bill No. 863
Third Reading Copy

For the Committee on Business and Industry

Prepared by Bart Campbell
March 12, 1991

1. Page 1, line 16.

Insert: "STATEMENT OF INTENT"

A statement of intent is required for this bill in order to provide a guideline for the board of investments to follow in certifying a Montana small business investment capital company. The board shall take the steps necessary to ensure that the company certified as the small business investment capital company will represent and be concerned with the economic development needs of all communities of the state and not just one geographic area of the state."

2. Page 16, line 3.

Strike: "UP TO".

Insert: "not less than"

3. Page 16, line 14.

Strike: "CERTIFIED"

Insert: "qualified"

4. Page 16, line 15.

Strike: "a"

Insert: "the certified Montana small business investment capital"

Strike: "that"

Insert: "once it".

5. Page 18, line 13.

Strike: "MAY"

Insert: "must"

6. Page 19, line 10.

Following: "the"

Insert: "qualified"

7. Page 19, line 12.

Following: "taxpayer"

Insert: "and the tax credit limitation relating to a capital investment in the qualified Montana small business investment capital company must be in addition to any other tax credit limitation in this section"

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
March 12, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 863 (third reading copy as amended, second printing -- blue), respectfully report that House Bill No. 863 be amended and as so amended be concurred in:

1. Page 1, line 16.

Insert: "STATEMENT OF INTENT"

A statement of intent is required for this bill in order to provide a guideline for the board of investments to follow in certifying a Montana small business investment capital company. The board shall take the steps necessary to ensure that the company certified as the small business investment capital company will represent and be concerned with the economic development needs of all communities of the state and not just one geographic area of the state."

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Insert: "must"

6. Page 19, line 10.

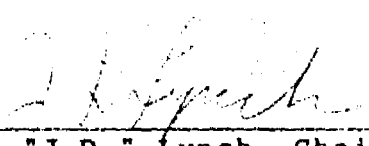
Following: "the"

Insert: "qualified"

7. Page 19, line 12.

Following: "taxpayer"

Insert: "and the tax credit limitation relating to a capital investment in the qualified Montana small business investment capital company must be in addition to any other tax credit limitation in this section"

Signed: 

John "J.D." Lynch, Chairman

for 3-12-91
Amd. Coord.

JPB 3/12 8:15
Sec. of Senate